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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.22 OF 2021
IN
WRIT PETITION (ST) NO. 5573 OF 2020

Mandakini K.Kokane @

Mandakini Godse

V/s.

State of Maharashtra & Ors.

...Petitioner

...Respondents

Mr.Satyajeet P. Dighe for the Petitioner.

Mr.Yuvraj D. Patil, AGP for the State – Respondent Nos.1 and 2.

Mr.Sachin Gite for the Respondent No.3.

CORAM : R.D. DHANUKA &
MADHAV J. JAMDAR, JJ.
DATE : 11TH JUNE, 2021.
THROUGH VIDEO CONFERENCE)

P.C. :-

1. By the present review petition, the petitioner is seeking review of our order dated 27th October, 2020 passed in Writ Petition (Stamp) No.5573 of 2020. The review is sought only to the extent of the rejection of prayer clause (a) of the Writ Petition and further prayer is sought that Case No.3809 of 2019 be remanded to the Caste Scrutiny Committee, Nashik for consideration of the same afresh by considering additional documents produced by the

petitioner. The said prayer clause (a) is reproduced hereinbelow for ready reference:-

“(a) By issuing appropriate writ, order and direction the order dated 28/06/2020 passed by the District Caste Scrutiny Committee Nashik in Case No. 3809 of 2019 be quashed and set aside and further the said Respondent No.2 be directed to issue Caste Validity Certificate to the Petitioner for Kunbi Caste which comes under Other Backward Caste.”

Mr. Satyajeet Dighe, the learned Advocate of the Petitioner clarified that as far as other part of the operative portion of said order dated 27.10.2020, he is not seeking review.

2. We have heard Mr.Satyajeet Dighe, learned advocate for the petitioner, Mr.Sachin Gite, learned advocate for the respondent no.3 and Mr.Yuvraj Patil, learned AGP for the respondent nos.4 to 7.

3. It is the main contention of Mr.Dighe that this Court has confirmed the order of the District Caste Scrutiny Committee, Nashik dated 25th May, 2020 in case No.3809 of 2019 on the ground that the petitioner has failed to establish that the surname Ghotikar and Kokane are of the same family and therefore discarded certain documentary evidence more particularly the document i.e. the entry dated 09.07.1893 in the register recording birth and death in the village mouje Sansari, Taluka Nashik, (village form – 14). The said

document records that son was born on 09.07.1993 to Bhiva Trimbaka Ghotikar and caste is shown as "Kunbi". The surname of the family of the Petitioner is "Kokane". It is the contention of the Petitioner that surname "Ghotikar" and "Kokane" are of the same family and therefore the reliance is placed on said document dated 09.07.1893. We have by our order dated 27.10.2020 rejected the said contention.

4. Mr. Dighe, the learned Counsel for the Petitioner submitted that after perusal of the Judgment of this Court in the captioned Writ Petition, Petitioner made further search with the revenue office to obtain further material or 7/12 extract or Mutation Entry by which the Petitioner would be in a position to precisely establish that Bhiva Trambaka Ghotikar and Bhiva Trambaka Kokane are one and the same person only. Accordingly, Petitioner made a detailed search and after putting in considerable efforts and labour have recently received several other revenue records which would establish that Bhiva Trambaka Ghotikar and Bhiva Trambaka Kokane are one and the same person. He submitted that the said family having surname Ghotikar and Kokane are one and the same. The petitioner has produced many documents which are mainly revenue record from page nos.259 onwards. However Mr.Dighe,learned

advocate for the petitioner at the time of argument relied only on two documents which are at pages 261 and 305. It is the contention of Mr.Dighe that the said documents clearly show that Kokane family is also having surname Ghotikar and therefore, the said documents are relevant documents required to be taken into consideration by this Court as well as by the Caste Scrutiny Committee.

5. On the other hand, Mr.Gite, learned advocate for the respondent no.3 pointed out Order 47 Rule 1 (c) and Order 47 Rule 4 (2) (b) of the Code of Civil Procedure, 1908. He submitted that the documents on which Petitioner is relying on in the Review Petition are revenue documents and therefore, available at any point of time and thus would clearly shows that the petitioner was not diligent. He submitted that the review petition itself is thus not maintainable. He further submitted that the documents which are produced at pages 261 and 305 are also not credible and therefore, no interference is warranted.

6. Mr.Patil, learned AGP submitted that there are no legal reasons for review of the order and adopted the arguments advanced by Mr. Sachin Gite.

7. A perusal of the order dated 27th October, 2020 passed by us in Writ Petition (Stamp) No.5573 of 2020 clearly shows that various reasons are given on merits of the case from paragraphs 22 to 37 regarding the claim of the Petitioner. It is to be noted that the reasons given are not only regarding only one aspect that the petitioner failed to establish that the surname Ghotikar and Kokane are of the same family and therefore the petitioner belongs to said family as submitted by the learned Advocate of the Petitioner but on various other issues. We have *inter alia* given following reasons:-

(i) The document at serial no.2, which is school leaving certificate dated 01.08.2003 issued by the Head Master of school mentions the religion and caste of the petitioner as "Hindu Maratha".

(ii) As far as the main document at serial no.13 on which the petitioner has mainly relied which is dated 09.07.1893, we have found that the petitioner has failed to establish the authenticity of the said document. In fact the Vigilance Cell Committee along with the representative of the petitioner- Translator Mr. Peerjada had gone to the office of Tahsildar, Taluka and District Nashik on 20.12.2019 and took search of the record and upon search of the record found no such document. The said aspect is recorded in the report of Vigilance

Committee dated 03.01.2020 and we have relied on the said circumstance. We have also observed that this aspect is not controverted by the Petitioner.

(iii) Mr. Anil Vasant Daunde working as the Tahsildar Nashik had filed an affidavit dated 28th July, 2020 stating that the record of the birth and death of 1893 was in destroyed and damaged condition and therefore it could not be stated that the document on which the petitioner had relied upon was part of the record. We have found that the petitioner has failed to establish the said document of 1893.

(iv) In the order under review, we have specifically pointed out that three different genealogies were filed by the petitioner from time to time and how the changes were made in the genealogy by the petitioner. We have specifically observed that the petitioner had not approached the Court with clean hands as he was changing the genealogy to suit his case.

(v) We had also found that one more document on which the petitioner had relied upon bearing Mutation Entry No.1210 dated 23rd March, 1937, there were certain additions made in the original document. Therefore there is no substance in the contention raised

by the learned Advocate of the petitioner that the only reason given by this Court for rejecting the petitioner's caste claim and confirming the claim of the Caste Scrutiny Committee was that the petitioner had failed to establish that the surname Ghotikar and Kokane are of the same family. It is also to be noted that in the Review Petition the Petitioner has also stated that the other reason given by the Court while rejecting prayer clause (a) is that this Court has concluded that the existence of the 1893 document is not conclusively established as the Petitioner had failed to produce original certified copy of the same. Some of the reasons for rejection of the claim of the Petitioner as set out hereinabove would clearly show that there is no substance in the said contention.

8. The learned Advocate Satyajeet Dighe while arguing this Review Petition relied only on two documents namely revenue record pertaining to land bearing Survey No.136 (3-B) (page 261) and revenue record pertaining to Survey No.145 (4-B) (page 305) of village Sansari, Tal. Nashik. On the basis of these two documents, it is the contention of Mr.Dighe that Govind Bhima Kokane @ Govind Bhima Ghotikar are the names of same person. At the outset it is significant to note that throughout the contention of the Petitioner is that surname "Ghotikar" and "Kokane" is of the same family whereas

the revenue record (page no.305) on which the petitioner is now relying upon reflect the surname as “Ghotkar” and not “Ghotikar”. According to Mr.Dighe, by Mutation Entry no.4092, the names of the legal heirs of Govind Bhima Ghotikar @ Govind Bhima Kokane were included in the revenue record.

9. A bare perusal of the revenue record shows that the revenue entry at serial no.4092 is mentioned in the different ink than other entries in both the revenue records (page nos. 261 and 305). The handwriting is also of different person than the person who has written other entries on said page no. 261 and 305. The documents at page nos.261 and 305 are photocopies of certified copies of the revenue record and the same are obtained by the petitioner on 6th November,2020. The certified copies of the revenue record are provided by making the handwriting entries in the format of revenue record on the village Form No. 7, 7A and 12. Thus, the handwriting on the said certified copies ought to have been of the same person. In fact the name Govind Bhima Ghotikar @ Govind Bhima Kokane mentioned at page 261 is also in some other handwriting than the other contents on said page 261. It is clear that the documents which are produced at pages 261 and 305 are not genuine documents and is full of interpolation. Thus no reliance can be placed on the said

documents for seeking review of the order dated 27th October, 2020.

10. It is also significant to note that the basis of said document at Sr. No. 261 and 305 is Mutation Entry No. 4092. However, the Petitioner's Counsel is not relying on the same. The said Mutation Entry No. 4092 dated 16.11.1969 is produced at Page No. 323. However, the same is concerning changes in revenue record of the entire village for giving effect to the new measurement methods and has nothing to do with recording death of said Govind Bhiva Ghotikar or Govinda Bhiva Kokane and bringing on record his legal heirs. The said revenue entries are thus totally irrelevant.

11. Mr. Gite, the learned Advocate appearing for the Respondent No.3 is right in his submission that the revenue record is available at any point of time and therefore the petitioner has not shown due diligence for producing the said revenue record. The petitioner could have produced the revenue record not only in this Court in the said Writ Petition (Stamp) No.5573/2020 but in fact could have produced the said revenue record before the Caste Scrutiny Committee. It is thus clear that the petitioner has not shown due diligence as contemplated under Order 47. Further Order 47 Rule 4 (2)(b) of the Code of Civil Procedure, 1908 specifically provides that

the application for review shall not be granted on the ground of discovery of new matter or evidence, which the applicant alleges was not within his knowledge or could not be adduced by him when the order was passed, without strict proof of such allegation. The Petitioner has failed to strictly prove that the newly obtained documents could not be placed before this Court by the petitioner as well as before the Caste Scrutiny Committee as the same were not available with the petitioner at the relevant point of time and the same were not known to the petitioner.

12. It is the case of the petitioner that the question that Ghotikar and Kokane are same person was not in dispute before the Caste Scrutiny Committee as the only objection raised by the respondent no.3 was regarding incorrect family tree given by the petitioner before the Caste Scrutiny Committee. It is the case of the Petitioner that the petitioner genuinely believed that Mutation Entry no.1210 dated 23rd March, 1937 would be sufficient enough to establish the link between Govind Bhima Ghotikar @ Govind Bhima Kokane and the legal heirs. However, a perusal of the order dated 25th June, 2020 passed by the Caste Scrutiny Committee recording objections raised by the Respondent No.3 particularly point No.7 clearly shows that the surname Ghotikar and Kokane are of two

different families and therefore the petitioner is not from the Ghotikar family is specifically raised by the respondent no.3 and considered by the Caste Scrutiny Committee. It is thus clear that the case put up by the petitioner for filing the review petition that this point was not raised before the Caste Scrutiny Committee and for the first time is raised in the Writ Petition and rejected by the Court is totally baseless.

13. In view of this, the review petition is dismissed with costs quantified at at Rs.25,000/- which shall be paid by the review petitioner to the Maharashtra Legal Services Authority within two weeks from today.

(MADHAV J. JAMDAR, J.)

(R.D. DHANUKA, J.)